

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:09CR48
	)	
v.	)	
	)	
ISIDRO DUARTE-ANDRADE,	)	ORDER
	)	
Defendant.	)	
	)	

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This matter is before the Court on defendant's motion for leave to proceed *in forma pauperis* (Filing No. 153), and the notice of appeal (Filing No. 152) in which he seeks to appeal from the final order of this Court (Filing No. 149) denying his motion for reconsideration in connection with his motion filed pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence (Filing No. 140). The Court finds the motion for leave to proceed *in forma pauperis* should be granted.

However, Title 28, U.S.C. § 2253(c) provides that unless a certificate of appealability is issued by either a circuit justice or this court, an appeal may not be taken from a final order in a proceeding under § 2255. In his plea agreement, the defendant waived all of his rights to appeal his conviction or sentence, and also has waived his rights to file a post-conviction motion addressing either his conviction or sentence, accordingly the Court denied his motion for § 2255 relief. For

the same reasons, the Court will decline to grant a certificate of appealability. Accordingly,

IT IS ORDERED:

- 1) Defendant's motion for leave to proceed *in forma pauperis* is granted.
- 2) No certificate of appealability will issue in this case.

DATED this 25th day of March, 2010.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court